

Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 12th Street, SW
Washington, DC 20554

Re: Notice of *Ex parte* Presentation
Docket No. 98-82

Dear Ms. Dortch:

On May 31, 2005, Harold Feld, Associate Director, Media Access Project, Jennifer Scher, Intern, Media Access Project, and Amy Vanderlyke, Intern, Media Access Project, met with Jordan Goldstein, Senior Legal Advisor to Commissioner Michael Copps, Rudy Briocche, Media Advisor to Commissioner Jonathan Adelstein, regarding the above captioned docket.

Mr. Feld presented the arguments filed in CS Docket No. 98-82, *Reply Comments of Consumer Federation of America, et al.* (February 19, 2002.) Mr. Feld stated that the FCC should eliminate the single majority shareholder exemption (“SMSE”). The FCC should look to the Department of Justice, which requires consideration of the enhanced possibility of collusion between majority and minority shareholders when evaluating the potential for anti-competitive effects in any joint venture.

Mr. Feld stated that the SMSE eliminates competition among licensed entities in three distinct manners. First, minority shareholders are able to exercise influence over licensed entities resulting in influence over programming and service choices made by license holders. Second, minority and majority shareholders are able to engage in tacit collusion as a means of circumventing transparent collaboration. Third, the result of such collusion is a lack of checks and balances on licensed entities to ensure accountability in markets where competitors provide different or additional services.

Regarding the insulation of limited partnerships, Mr. Feld reiterated that limited partnerships should not be insulated at all. However, if the FCC is going to permit limited partnerships through insulation, the FCC needs to protect all manners of content and IP-enabled services. As discussed in MM Docket No. 92-264, *Petition for Reconsideration of Consumer Federation of America, et al.* (January 3, 2000), Congress clearly intended to protect consumers from lack of competition in all lines of communication, not just video programming. The FCC needs to focus on protecting broader content and IP-enabled services such as VOD, VOIP, and interactive TV.

With regard to the burden of proof necessary to support the possibility of collusion, Mr. Feld observed (a) that the attribution rules are supported on the “rational basis” test, not intermediate scrutiny, and (b) as cited in previous filings, the Department of

Justice handbook on limited partnerships also addresses joint ventures.

In accordance with Section 1.1206(b), 47 C.F.R § 1.1206, this letter is being filed electronically with your office today.

Respectfully submitted

Harold Feld
Senior Vice President
Media Access Project